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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TRAN, SUSAN T

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 07/03/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/931,468

Applicant(s)

Aoyagi et al.

Examiner

Susan Tran

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

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### **DETAILED ACTION**

Receipt is acknowledged of applicant's Information Disclosure Statement filed 09/27/01, and Preliminary Amendment filed 09/15/01.

#### ***Claim Objections***

1. Claims 12 and 20 are objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

#### ***Claim Rejections - 35 U.S.C. § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, 6, 8, 10, and 11 are indefinite in the phrase "gel-like", because it renders the claims indefinite for including elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

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Claim 13 is rejected in the use of the phrase "an agent for removal by adsorption of a harmful substance". The phrase is unclear as to what is being removed. It is suggested to rephrase to further clarify the substance being removed.

### ***Double Patenting***

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 1-3, and 20 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 12 of prior U.S. Patent No. 6,299,867. This is a double patenting rejection.

### ***Claim Rejections - 35 U.S.C. § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 8, 9, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hara JP 61-216044, in view of Ochi JP 61-48614..

Hara teaches formed hydrophobic konjak gel useful as absorbent film, water proof paper, or material for seasoning (pages 2-4, and tables on page 14). Hara is silent as to the teaching of the konjak gel coating an adsorbent material. However, Hara teaches that the konjak gel can be made in sheet, and used as absorbent film.

Ochi teaches particles of adsorbent agent to adsorb fatty acid and cholesterol formed by digestion in digestive organ, where the adsorbent agent is coated with film forming material. It would have been obvious for one of ordinary skill in the art to use the konjak gel film as a coating material for Ochi's adsorbent agent, because the references teach the advantageous results over the use of gel-forming material useful in pharmaceutical and food arts. The expected result would be an adsorbent particle containing gel coating film useful as food grade and nonfood grade substances.

6. Claims 5-7, and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hara and Ochi, in view of Unger et al. WO 93/12877 and Muhlfeld et al. US 5,972,427.

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Hara and Ochi are relied upon for the reason stated above. The references are silent as to the teachings of adsorbent agent, and polymer film forming.

Unger teaches adsorbent material coating with gel-forming polymer useful to remove substances from fluid stream (pages 3-4, 11-13, 18). Unger does not teach activated carbon as an adsorbent agent.

Muhlfeld teaches adsorbent particles comprising activated carbon, silica gel, or charcoal as sorption mean (column 5). Hence, it would have been obvious for one of ordinary skill in the art to use activated carbon or charcoal as an adsorbent agent in view of the teaching of Muhlfeld, and polymer film-forming of Unger, because the references teach the advantageous results over the use of gel-forming material as an adsorbent mean to remove unwanted substances useful in pharmaceutical and food arts. The expected result would be an adsorbent particle containing gel coating film useful as food grade and nonfood grade substances.

#### ***Pertinent Arts***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yoji et al., and Grimberg are cited as being of interest for the teachings of adsorbent article.

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*Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600